REMARKS

Upon entry of the present amendment, the claims remaining in the application are: claims 3, 4, 6, and 9-16.

Amended claim 3 has been amended to depend from claim 10 and consequently, amended claim 3 corresponds to the subject matter of original claim 11.

Amended claim 9 corresponds to original claim 9, but is presented in independent form.

Amended claim 10 corresponds to the original claim 10, but is presented in independent form.

Amended claim 13 corresponds to the original claim 13, but is presented in independent form.

Amended claim 15 corresponds to the original claim 15, but is presented in independent form.

Amended claim 16 corresponds to the original claim 16, but is presented in independent form.

The 35 USC 103(a) rejections of claims based on combining references are respectfully traversed based on the reasons set forth hereinbelow.

The genius of invention is often a combination of known elements which in hindsight seems preordained. To prevent hindsight invalidation of patent claims, the law requires some "teaching, suggestion or reason" to combine cited references. Gambro Lundia AB v. Baxter Healthcare Corp, 110 F.3d 1573, 1579, 42 USPQ2d 1378, 1383 (Fed. Cir. 1997).

The opportunity to judge by hindsight is particularly tempting. Consequently, the tests of whether to combine references need to be applied rigorously. In re Dembiczak, 175 F. 3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999); In re Gartside, 203 F.3d 1305, 53 USPQ 2d 1769 (2000)

(guarding against falling victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher).

Whether a motivation to combine prior art references has been demonstrated is a question of fact. Winner International Royalty Corp. v. Wang, 202 F.3d 1340, 1348, 53 USPQ2d 1580, 1586 (Fed. Cir. 2000).

It is impermissible for the Examiner to first ascertain factually what applicant did, and then view the prior art in such a manner as to select from the random facts of that art only those which may be modified and then utilized to reconstruct applicant's invention from such prior art. In re Shuman, 361 F.2d 1008, 1012, 150 USPQ 54, 57 (CCPA 1966).

The test to be applied is whether the claimed invention would have been obvious to one skilled in the art when the invention was made, not to an Examiner after learning all about the invention. Stratoflex, Inc. v. Areoquip Corp., 713 F.2d 1530, 1538, 218 USPQ 871, 879 (Fed. Cir. 1983).

Inventions must be held to be nonobvious where neither any reference, considered in its entirety, nor the prior art as a whole, suggested the combination claimed. Fromson v. Advance Offset Plate, Inc., 755 F.2d 1549, 1556, 225 USPQ 26, 31 (Fed. Cir. 1985); ACS Hospital Systems, Inc. v. Montefiore Hospital, 732 F.2d 1572, 1577, 221 USPQ 929, 932-33 (Fed. Cir. 1984).

Nowhere does the rejection indicate where in the prior art there might be a suggestion of combining teachings of the individual references, or how, if there was such a suggestion, such combination would equal any invention claimed by applicant.

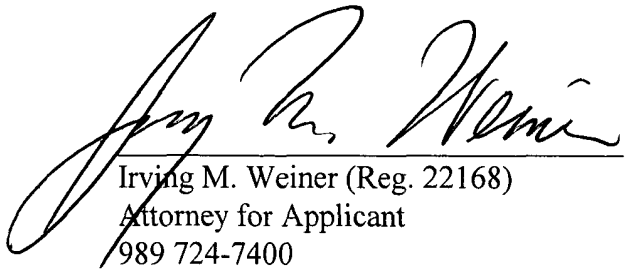
The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438.

It is respectfully submitted that the application is now in condition for allowance, and a notice to this effect is earnestly solicited.

If the Examiner believes that the application is not now in condition for allowance, it is respectfully requested that the Examiner telephone the undersigned attorney for applicant in an effort to facilitate the prosecution, and/or to narrow the issues for appeal, if necessary.

Favorable reconsideration is respectfully requested.

Respectfully submitted,



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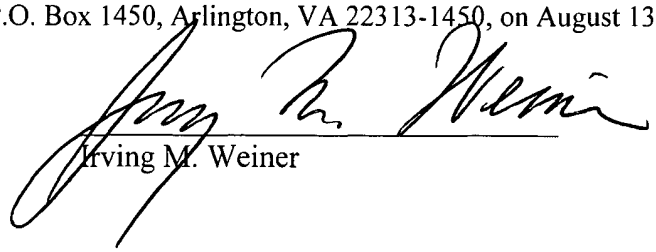
I hereby certify that the foregoing amendment was sent by first class mail to Mail Stop Non-Fee Amendment, Commissioner for Patents, P.O. Box 1450, Arlington, VA 22313-1450, on August 13, 2003.



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